

CHESTER LAMBERT LILLEY, JR.,
Plaintiff,
v.
MATTHEW LEVCHUK, D.A.,
Defendant.

prisoner's ability to file a § 1983 complaint providing, in pertinent part that,

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

Plaintiff has failed to fairly allege that he is under imminent risk of physical harm; therefore his complaint is subject to dismissal pursuant to § 1915(g).

Finally, to the extent Plaintiff is challenging the legality of his confinement, the Court notes that Plaintiff has a habeas petition, filed pursuant to 28 U.S.C. § 2254, pending in this district that it is under review. (5:16-cv-00031-FDW).

Based on the foregoing, the Court finds that Plaintiff's § 1983 complaint will be dismissed.

IT IS, THEREFORE, ORDERED that Plaintiff's complaint is **DISMISSED**. (Doc. No. 1).

The Clerk is respectfully directed to close this civil case.

SO ORDERED.

Signed: October 28, 2016

A handwritten signature in black ink, reading "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

